THE DOWNS LAW GROUP
EST. 1990

February 17, 2022

Submitted Through FOIA Public Access Link (PAL)
Environmental Protection Agency

Re: Freedom of Information Act Request regarding use of dispersants following the Deepwater Horizon Incident

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Downs Law Group (DLG) requests records[1] from Administrator Lisa Jackson's involvement in the use of chemical dispersant products in the federal waters, state waters, waters of the United States, and Gulf of Mexico following the April 20, 2010 Deepwater Horizon Incident (DHI), regarding the following information, or access to it for inspection or duplication, which are in possession of or generated by the Environmental Protection Agency (EPA) for the time period of April 20, 2010 – April 20, 2011:

1. All communications, documents, drafts of documents, jottings, and records[1] involving Administrator Lisa Jackson and employees of NALCO regarding, the use of dispersants, including COREXIT products;
   a. chemical composition of dispersants, including COREXIT products;
   b. designating the chemical composition of dispersants, including COREXIT products, as confidential business information (CBI)[2]; and
   c. the decision to disclose the chemical composition of dispersants, including COREXIT products, to the public[2];
2. All communications, documents, drafts of documents, jottings, and records[1] pertaining to the use of dispersants, including COREXIT products, involving Administrator Lisa Jackson and British Petroleum employees David Rainey, Tony Hayward, Doug Suttles, Steven Palmer, and/or Jean Martin;
3. All communications, documents, drafts of documents, jottings, and records[1] pertaining to the use of dispersants, including COREXIT products, and transparency with the public involving Administrator Lisa Jackson and U.S. Coast Guard Rear Admiral Mary E. Landry and/or U.S. Coast Guard Commandant Admiral Thad Allen;

[1] Records shall include electronic records, as defined by the FOIA, of official and unofficial reports, meeting notes, emails, and other communications, along with records in any other media, such as photos and videos, related to the requested information.
[2] Exhibit A.

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4. All communications, documents, drafts of documents, jottings, and records[1] pertaining to the use of dispersants, including COREXIT products, involving Administrator Lisa Jackson and then Louisiana Governor Jindal's administration[3], including
   a. Alan Levine - Secretary, Louisiana Department of Health and Hospitals;
   b. Peggy Hatch – Secretary, Louisiana Department of Environmental Quality; and
   c. Robert Barham – Secretary, Louisiana Department of Wildlife and Fisheries;
5. All communications, documents, drafts of documents, jottings, and records[1] pertaining to the use of dispersants, including COREXIT products, involving Administrator Lisa Jackson and then Alabama Governor Riley's administration; then Florida Governor Crist's administration; and then Mississippi Governor Barbour's administration;
6. All communications, documents, drafts of documents, jottings, and records[1] involving Bill Streever;
7. All communications, documents, drafts of documents, jottings, and records[1] involving David Dutton;
8. All communications, documents, drafts of documents, jottings, and records[1] involving email addresses ending with "@cteh.com"

For purposes of fee determination, please note I work for The Downs Law Group, a law firm that that represents numerous BP Oil Spill response workers and Gulf Coast residents who have filed lawsuits alleging medical claims against BP for its negligence during 2010. This information could be highly relevant to our litigation and is a matter of interest for the public. Regardless, DLG is willing to pay fees for this request up to a maximum of $500. If you estimate that the fees will exceed this limit, please inform us first.

Please provide the information in native format and original electronic format as it is kept in the ordinary course of business. Thank you for your consideration and prompt attention to this request.

Respectfully,

/s/ Scott Largen

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[3] Additionally, we request any information on the May 12, 2010, meeting referenced in Secretary Levine's letter to BP's David Rainey, Exhibit B, wherein he cites Louisiana's hesitation to allowing use of dispersant and Rainey's ultimatum "if Louisiana cannot agree with this approach, it is no longer 'BP's spill.'"

EXHIBIT

A

Assistant Administrator Paul Anastas
Dispersant Testing Release
June 30, 2010

As prepared for delivery.

Thank you all for joining us. Today we are releasing the data gathered from our first round of toxicity testing of eight oil dispersants. This testing was prompted by Administrator Jackson's direction that BP and EPA obtain further data on all approved and available dispersants, including Corexit 9500, the product currently in use.

Administrator Jackson has said many times that the decision EPA and the Coast Guard made to authorize the use of dispersants was a difficult choice – but one suited to the emergency we're facing. With a spill of this size and scope, dispersants are useful in breaking up the oil and preventing its spread – particularly to fragile wetlands.

That approval has come with strict conditions. We have limited the daily amount of subsea use. We have required strict monitoring of environmental conditions in the areas of application. And in the month after EPA and the Coast Guard directed BP to ramp down dispersant use, the volume applied dropped nearly 70 percent from peak usage. That policy does not change, even with these initial data.

EPA has also insisted on transparency. Administrator Jackson helped persuade NALCO, the company that manufactures Corexit, to release the Confidential Business Information claims and publicly disclose details about the ingredients of their dispersant. EPA has provided a broad range of information on dispersants and other issues on our website http://www.epa.gov/bpspill. The next step in the push for transparency is the testing we're releasing today.

Let me be clear: this is the **first** round of data. I know many of you are interested to hear if this testing means EPA will order BP to switch dispersants. We are not making any such recommendation at this time. We have additional testing to do.

What today's data are showing is that, in the tests we performed, all of the dispersants are roughly equal in toxicity, and generally less toxic than oil. None of the eight dispersants tested displayed biologically significant endocrine disrupting activity.

JD-2000 and Corexit 9500, the product currently in use, proved to be the least toxic to small fish, while JD-2000 and SAF-RON GOLD were the least toxic in the tests on mysid shrimp.

Finally, internal modeling results show that the dispersant constituents are expected to biodegrade in weeks to months, rather than remaining in the ecosystem for years as oil might.

Let me be clear about another point as well: this first round of testing studied specific effects under specific conditions. These data provide information on only some of the variables that we must consider. We are going to need more testing to get a full picture of dispersant impacts, and make any determination as to whether one product ranks better or worse than another under all of the conditions of its use.

The next phase of EPA's testing will look at the acute toxicity of multiple concentrations of Louisiana Sweet Crude oil alone and combinations of Louisiana Sweet Crude oil with each of the eight dispersants for two test species. Additional studies are underway to better understand endocrine activity.

We need more data before deciding whether it makes sense to change dispersants. But our ultimate goal in all of this is to reach a point where dispersants are no longer necessary – to fully phase out their use and rely on oil collection, burning, skimming and other methods to protect our Gulf and our shorelines. It's important to remember that oil

is enemy number one in this crisis. So we will continue testing, and we will be sharing more information as soon as we have it. Meanwhile, we are doing everything we can as part of this historic response.

EXHIBIT B

Bobby Jindal
GOVERNOR

Alan Levine
SECRETARY

State of Louisiana

Department of Health and Hospitals

Office of the Secretary

May 13, 2010

Dr. David I. Rainey
Vice President, Gulf of Mexico Exploration
BP America, Inc.
Post Office Box 3092
Houston, TX 77253-3092

Dear Dr. Rainey:

We are in receipt of your May 11, 2010 response to our inquiry about the unprecedented use of subsea dispersants as one of the tools being used to combat the growing volume of oil in the Gulf of Mexico. Also, I want to thank you for taking the time to participate in the multi-agency meeting yesterday at the Governor's Office of Homeland Security. It is evident from your letter and our discussion that there are simply no answers to the questions we raised. While we do appreciate any steps being attempted to mitigate the impact of this spill on our coast, we cannot simply concur with the trade-off you are suggesting we make as it relates to our underwater wildlife without knowing what that trade-off is. And, I must strenuously dispute your assertion that if Louisiana cannot agree with this approach, it is no longer "BP's spill". To be plain, nobody in our meeting had any interest in casting blame, nor is that helpful. We want to solve the problem. But we want to understand the implications of decisions being made.

Some examples of words seemingly carefully chosen in your response give us pause, and perhaps even demonstrate that our fragile wildlife area has become a laboratory for testing the use of these chemicals. For instance, statements like "…potential damage to the environment may be reduced by dispersing the oil in the water column…"; "…a level that is less likely to affect the environment…"; and "…human studies suggest that humans are relatively resistant…", without the science to back them up, are nothing more than educated guesses.

It is noted in your letter that one of the dispersant ingredients is used in hand cleaners applied to humans. We agree—but people do not ingest hand cleaner, and if they do, most hand cleaner recommends calling a physician or poison control when it is ingested. One of our concerns lies in the potential for Gulf species to ingest these chemical ingredients combined with oil product, what consequences are associated with ingestion, and most importantly, what risks exist for people who ingest this exposed seafood. Perhaps the answer is none. All we are asking is for us to have a better understanding of this. Further, we do not understand what impact these dispersants will have on the sustainability of the ecosystem beneath the surface when they have been ingested.

Your letter also suggests the half-life of dispersants is "days or weeks". While we understand you have science to support this claim for surface use, we are clearly without data to support this assumption for use deep beneath the surface, where temperature, pressure and the physics are entirely different. If you maintain that the half-life is days or weeks at those depths, there should be evidence to support it.

We want to again be clear that we are asking for this information specifically so we can ensure the public our seafood product is safe, and to ensure the continued viability of our ecosystem – which our state's economy relies upon.

As we discussed in our meeting, what testing has been done has not addressed the issues we have raised, and further, the samples are collected from and tested on water from no deeper than 550 meters below the surface. That's roughly one-third of the way to the sea floor, where the dispersants are being applied at much greater depths. This potential lack of depth in testing has been acknowledged. For instance, on page 4 of the document titled "Summary of EPA's Dispersant Monitoring and Assessment Directive," which can be accessed at http://www.epa.gov/bpspill/dispersant-plume-monitoring-for-may11.pdf, the EPA correctly stipulates that "sampling in the deep sea may pose challenges due to equipment limitations and malfunctions." We are very interested in understanding the barriers BP faces in getting accurate water samples at various depths where dispersant has been used. If BP can only collect water samples in a fraction of the area, how does the company truly understand the properties of the dispersant at those depths? Given that this underwater ecosystem is perhaps the richest in the world, we strongly urge you to consider why we have grave reservations about the trade-offs you ask us to make in your letter.

With regard to the "trade-offs" we reference, the statement below in your letter says:

> *As noted above, one of the primary reasons to use dispersants is to reduce the potential acute effects of the oil on wildlife. Consequently, for wildlife, any potential risks from the dispersant chemicals should be considered in the context of reduced risk from contact with the oil.*

When being asked to make trade-offs, we normally understand what we are trading. In this case, the state is being asked to trade one type of ecological damage for another that effectively resides behind "door number 2" – in effect, taking a gamble. Again, your assertion may be correct, but without data, we cannot affirm it.

We have no doubt you take personally the issues that are playing out, and we certainly respect the difficulty of the circumstances we all find ourselves in. But the decisions we make now will have implications far beyond our respective tenures, and we must ensure we have done everything we can to consider all the issues.

We must have science to support our claims that our seafood is safe, and we expect nothing less than for BP to make a commitment to ensure this happens. The Louisiana Departments of Health and Hospitals, Environmental Quality, Agriculture, Economic Development, Wildlife and Fisheries and our partners

are in the process of developing a robust long-term seafood safety program that will be submitted to BP. We hope to receive a swift commitment from BP that it will support this initiative.

Sincerely,

Alan Levine
Secretary, Louisiana Department of Health and Hospitals

Peggy Hatch
Secretary, Louisiana Department of Environmental Quality

Robert Barham
Secretary, Louisiana Department of Wildlife and Fisheries

cc: Tony Hayward, BP
Doug Suttles, BP
Mike Utsler, BP
Steven Palmer, BP
Jean Martin, Esq., BP
Lisa Jackson, Administrator, U.S. Environmental Protection Agency
Thomas Frieden, M.D., M.P.H., Director, U.S. Centers for Disease Control and Prevention
Margaret Hamburg, M.D., Commissioner, U.S. Food and Drug Administration